

**Alan Muller, Green Delaware Comment, 12/4/2006, 8:56PM**

At 05:07 PM 12/4/2006 -0500, Burcat Bruce H (DOS) wrote:

Dear Mr. Firestone:

As a coincidence I was just about to send you, Dr. Kempton and the other participants the above document when I received your e-mail. There were some technical issues that needed to be resolved with your filing as described in the attached memorandum such as the appropriate form of service on the other participants. Nevertheless, the Commission has scheduled this matter for its December 19, 2006 meeting.

Sincerely,

Bruce H. Burcat, Executive Director  
Delaware Public Service Commission

December 4, 2006 1930 hours

Dear Mr. Burcat and other parties:

In our view the Firestone/Kempton *Petition for Rehearing and Reconsideration* (hereafter, *Petition*) raises various interesting substantive and procedure questions. We have certainly not fully digested these since receiving the document electronically a couple of hours ago.

Apparently the *Petition* was served upon the Commission electronically on November 30, 2006, and was served upon the other parties this afternoon, December 4, 2006. Do I understand this correctly?

We would suggest that in the future filings be served upon all parties simultaneously.

Mr. Burcat's letter states:

"4. The State Energy Office has not, as of yet, decided whether its decision to concur in Order No. 7066 (as amended by Order 7081) is subject to a petition for rehearing or reconsideration. The Energy Office reserves its right, pending further discussions, to later make a final decision on that procedural question and the *Petition* itself."

We have been very concerned about various aspects of how the Energy Office is conducting itself this matter. The wording of the governing statute (codified at 26 Del C. § 1007) suggests that the Energy Office is supposed to function as an independent and coequal party, and not as a shadow or subsidiary of the Public Service Commission. We have seen little indication that this is happening. The practical consequence of this seems to be that environmental considerations ("*Resources that provide short- or long-term environmental benefits to the citizens of this State (such as renewable resources like wind and solar power)*"), the legal responsibility and "turf" of the DNREC, are not adequately asserted--officially--nor receiving due consideration. This, one could argue, tends to lead to the erroneous judgements complained of in the Firestone/Kempton *Petition*. In fact, Firestone/Kempton and others (including ourselves, Green Delaware) are

attempting to do what the Energy Office ought to have done.

Your paragraph (4.) above raises the question of why you are speaking for the Energy Office. Why is the Energy Office not speaking for itself?

In our view it would probably be wiser for the Commission staff not to speak in this fashion for the Energy Office.

As to the substance of paragraph (4.), we do not necessarily agree that the Energy Office can unilaterally determine whether "... *its decision to concur in Order No. 7066* *Order No. 7066 (as amended by Order 7081) is subject to a petition for rehearing or reconsideration.*" On what basis would the Energy Office make such a determination? And what would it mean? As far as I know the Energy Office/DNREC held no independent proceedings in this matter and issued no Order of its own. The laws and regulations governing the DNREC (7 Del. Code) have not been so far invoked....

Therefore, we hope there is no intent to suggest that consideration of the *Petition* by the Commission depends on the concurrence of the Energy Office.

We agree in general with the substance of the Firestone/Kempton *Petition*. It is clear the Commission and the Energy Office, were directed to consider the environmental as well as the price implications of energy alternatives. In spite of considerable correspondence and discussion, the Order does not seem to do that in a logical or appropriately weighted manner.

We think, all considered, that the public interest would be best served by the Commission's acceptance of the *Petition*. This would, amongst other advantages, give the Energy Office another opportunity to do what it should previously have done.

Yours very truly,

Alan Muller

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